



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of

SOTOYAMA et al

Atty. Ref.: 427-53

Serial No. 10/018,793

Group: 1761

Filed: December 21, 2001

Examiner: Unassigned

For: FOOD MATERIAL AND PROCESS FOR PRODUCING THE SAME, AND
CHEESE-LIKE FOOD AND PROCESS FOR PRODUCING THE SAME

* * * * *

February 11, 2003

Assistant Commissioner for Patents
Washington, DC 20231

Sir:

INFORMATION DISCLOSURE STATEMENT

As suggested by 37 C.F.R. 1.97, the undersigned attorney brings to the attention of the Patent and Trademark Office the references listed on the attached form PTO-1449, a copy of each of which is enclosed. English-language Abstracts of the Japanese references are also provided. This is not to be construed as a representation that a search has been made or that no better prior art exists, or that a reference is relevant merely because cited.

The Examiner is requested to initial the attached form PTO-1449 and to return a copy of the initialed document to the undersigned as an indication that the attached references have been considered and made of record.

The undersigned attorney of record hereby certifies under 37 C.F.R. §1.97(e) that each item of information referenced herein and attached hereto was first cited in any communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of this Information Disclosure Statement.

Respectfully submitted,

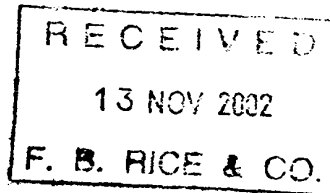
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12 November 2002

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Your Ref : 109032/NEW

Examiner's first report on patent application no. 74452/00
by MORINAGA MILK INDUSTRY CO. LTD.

Last proposed amendment no.

Dear Madam/Sir,

I am replying to the request for examination. I have based this report on the verified translation. I have examined the application and I believe that there are lawful grounds of objection to the application. These grounds of objection are:

1. There is no Notice of Entitlement on file.
2. Claims 1 and 5 do not define the invention because the steps of the food material which distinguishes the invention from the prior art are not defined in the claims.

It appears from page 10 of the specification that properties of viscosity and the cooling treatment are required to produce the food material according to the invention. While the feature related to the cooling treatment is defined in the method claims 3 and 4, it would appear that this feature should be included in product claims 1 and 5 to define the present invention.

3. The invention as defined in claims 1-6 is not novel and lacks an inventive step in the light of any one of the following*:
 - (i) JP 7-143845*
 - (ii) JP 11-103773*
 - (iii) JP 2001149008
 - (iv) JP 9275943
 - (v) JP 154485

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(vi) JP 9103242

(vii) JP 3195474

(viii) JP 3292855

(ix) JP 3058771

(x) JP 61081770

(xi) JP 60227660

(xii) JP 58198248

The present invention relates to a food material produced by heating and melting treatment of a processed cheese-like food at at least 120°C, and method claims.

However, each of the above citations discloses and teaches the production of cheese and cheese-like food at about 120 °C. Further, the method claim involving rapid cooling treatment is particularly disclosed in citations (vii) JP 3195474 and (viii) JP 3292855.

Therefore the invention is not novel and lacks an inventive step.

* Cited in the International Search Report and the IPER.

You have 21 months from the date of this report to overcome all my objection(s) otherwise your application will lapse. You will need to pay a monthly fee for any response you file after 12 months from the date of this report.

Yours faithfully,



MADHU K. JOGIA
Examiner of Patents, Section A2
Telephone: (02) 6283 2512

13 March 2003

JAMES & WELLS
DX GX 10012
Hamilton

Patent Application No: 516252
In the Name of: MORINAGA MILK INDUSTRY CO., LTD.
Your ref: 120244

14 MAR 2003
JAMES & WELLS

Examination Report

Thank you for your application that became examinable under the National Phase (under section 26(G)) on 21 November 2002.

Examination has been performed on the specification as filed.

An examination report was written by this office on the 22 November 2002 for the patent application no 516252. It appears this examination report never reached the applicant. I apologise for any inconvenience this may have caused. The final date for completion of all matters has been extended to 13 June 2004 as a consequence of this.

1) Section 10(4):

- a) Claims 1-5: The claims are vague, unclear and speculative. An amendment is required to narrow the scope of the claims. This may overcome the objection. In particular, the use of the phrase "food material" is broad and does not limit the type of food covered by the applicant's current invention. Like-wise the phrase "cheese-like" is not clear and does not clarify the term "food material".
- b) Claim 3: The word "obtainable" is not definitive as it covers more than one way of obtaining through the said method. A suggested amendment is to substitute this word for "obtained", so that the claim reads, a cheese like food produced as a result of heating and melting.
- c) Claim 6: There appears to be some essential features missing in the claim. The specification discloses that pressure is essential to achieve the said result. Also, in the specification an extra step of cooling is necessary and considered to be part of the heating and melting step. Please refer to page 9 of the specification.
- d) Claims 1-6: Claims cannot be supported by the disclosure unless they include all features essential to the invention.
Please consider, *No Fume v Frank Pitchford & Co Ltd* [1935] 52 RPC and *IBM's Application* [1970] RPC 533, which indicate the degree of definition required in the claims. It appears that the applicants' invention is related to the decrease in viscosity of cheese and the production of food products via this method.

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- e) As a result to the broad scope of the claims a full search has not been done. Please allow time for the office to perform such a search.

2) Section 13:

- a) As a result of investigation under Section 13, it appears the invention as claimed has been prior published in:

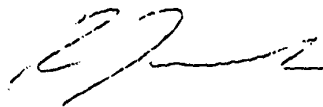
Citation	Claim(s) cited against
Edmonds cook book	All

It appears that the applicants' claims have been prior published. Claim 1 for instance covers any "food material" that can be produced with processed cheese, for example cheese sauce or cheese fondue. The same can be said for claim 2.

If you have any questions please contact me.

The final date for completion of all matters is 13 June 2004. An extension of time of up to 3 months may be requested under Section 19(2).

Yours sincerely



Raewyn Tuffery
for Commissioner of Patents, Trade Marks and Designs
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